



United States Department of the Interior

OFFICE OF THE SECRETARY

Washington, D.C. 20240

ER 04/193

APR 29 2004

Air Docket OAR-2003-0053
Environmental Protection Agency
Mail Code 6102T
1200 Pennsylvania Ave., NW
Washington, DC 20460

Dear Sir:

The Department of the Interior has completed its review of the Proposed Rulemaking to Reduce Interstate Transport of Fine Particulate Matter and Ozone. We appreciate the opportunity to comment on the U.S. Environmental Protection Agency's (EPA) January 30, 2004, *Federal Register* notice regarding the proposed Interstate Air Quality Rule (IAQR).

We applaud the EPA for addressing emissions of sulfur dioxide and nitrogen oxides from the electric utility sector in a manner that is flexible and cost-efficient. The reductions in emissions expected to result from implementation of the proposed rule would greatly benefit the air quality in many units of the National Park System and National Wildlife Refuge System across the eastern U.S. These benefits would help protect the health of our staff and visitors as well as improve scenic vistas, reduce acidic deposition and ozone injury on vegetation, and mitigate other air pollution-related stresses now facing our parks and refuges. Our specific comments, which have been coordinated with the National Park Service and Fish and Wildlife Service, are focused on EPA's requests for input on how the proposed IAQR would interact with the already existing requirements under the Regional Haze Regulations (RHR).

Extent to Which the IAQR meets "reasonable progress" requirements of RHR and the role of the Regional Planning Organizations

On page 69 FR 4587 EPA requested comment on "the extent to which the reductions achieved by these rules would, for states covered by the IAQR, satisfy the first long-term strategy for regional haze, which is required to achieve reasonable progress towards the national visibility goal by 2018." We expect that for many Class I areas the projected emission reductions expected from this rule may achieve most, if not all, of the "presumptive" rate of improvement for the worst 20 percent visibility days as envisioned by the RHR. However, since the baseline period for the RHR does not end until the end of 2004, at this time we are unable to precisely project the degree of improvement that might occur during the first planning period of the regional haze rule.

We also note that the regional planning organizations are just now undertaking the question of setting the future natural conditions estimates for the Class I parks and wildernesses. Until they have reached consensus on an approach, the degree of improvement needed to satisfy the "presumptive" case cannot be known.

In addition, the proposed LAQR only addresses emissions from the electric generating units (EGUs). While EGUs comprise the largest stationary source category for SO₂ and NO_x emissions nationwide (and in the east), the RHR requires the states to address all sources of visibility impairing pollutants. Of the 26 source types covered by the best available retrofit technology (BART) provisions, "fossil fuel-fired steam electric plants..." is just one and the regional planning organizations are working to identify all of the subset of large industrial facilities which are specifically subject to BART.

Nevertheless, we recognize that the LAQR's proposed emissions reductions greatly exceed the likely *regional* level of reductions, that would be achieved under implementation of only the regional haze requirements for the utility sector. For that reason, with the caveat regarding BART noted below, we support a policy that allows the states and Tribes covered by the LAQR to rely on the rule as meeting certain requirements of the RHR (e.g., contribution toward reasonable progress for the first planning period, or application of BART requirements) at least with respect to electric utilities. The regional planning organizations are in the position to assess the overall impact to visibility at each Class I area from implementation of the LAQR and then support the states and Tribes in estimating what additional measures, if any, are needed to achieve "reasonable progress" and to address any remaining sources subject to BART.

Whether compliance with LAQR meets BART

The EGUs subject to the LAQR include all units with an output equal to or greater than 25 megawatts. Emissions from these units are larger than those subject to BART, which is restricted to larger plants, built essentially between 1962 and 1977 (the 15-year period before the BART requirement was placed in the Clean Air Act). Many eastern power plants fall outside the BART window. It is clear that achieving modern emissions control requirements at all of the sources affected by the LAQR would exceed the emissions reductions likely from controlling only the BART sources. The degree of control that might be achieved from those units will not be known until the regional planning organizations and States and Tribes complete their work. Nonetheless, we expect that visibility across the East would likely be more improved, on average, under the LAQR than the RHR through 2018.

The LAQR is likely to be implemented through an emissions trading program, which allows for some sources (including BART units) to buy allowances rather than control. Such a market-based system lowers the costs of meeting a regional emissions target, but because a nearby BART source might choose to purchase allowances instead of installing pollution control equipment, a specific Class I area may not receive equivalent air quality benefit as it would under the RHR while another Class I area may receive a greater

benefit. Under the provisions of visibility protection rules in CFR section 51.302, Federal land managers (FLMs) may, at any time, "certify" that visibility impairment in a Class I area is "reasonably attributable" to an existing source. Such certification would trigger a source-specific BART analysis. The possibility that a source might make decisions consistent with a regional trading program but remain vulnerable to a subsequent FLM certification will likely trouble utilities.

This is exactly the same issue that faced the Western Regional Air Partnership (WRAP) when it negotiated a market approach for sulfur dioxide emissions reductions from stationary sources under the special western provisions of the RHR. The WRAP recognized the tension between two legitimate interests: creating an efficient market and ensuring that visibility is improved in all Class I areas. Under the landmark consensus approach we helped forge within the WRAP, the FLMs volunteered to limit future certifications.

The FLMs maintained the ability to certify impairment from a BART source, but agreed not to exercise this option if: (1) the level of pollution related to the market pollutant is decreasing over time; (2) there were no BART-eligible sources within 150 kilometers from the Class I area that have stagnant or increasing pollution (since the market will address "regional" emissions through decreasing caps); and (3) the source already has reasonable emissions controls for the market pollutant. In addition, the FLMs agreed to supply information on Class I areas most at risk, i.e., those where certain BART sources may be contributing a significant amount to visibility degradation at a Class I area. That information would be supplied to the states in time for stakeholders to "adjust" the market reductions if necessary to avoid a future certification.

Finally, it was agreed that the market, when completed in 2018, would satisfy the BART requirement for affected sources for sulfur dioxide. In the case of the WRAP, this approach to BART will be accomplished through a memorandum of understanding between the FLMs and certain western states and by provisions for the public disclosure of air quality assessment information included in the state implementation plans.

We highly encourage EPA to consider a similar approach to BART under the LAQR. Given the large amount of emissions reductions anticipated under the LAQR, it is unlikely that any future "certifications" would take place. However, similar provisions to the ones used by the WRAP would provide some assurance that all Class I areas in the East would still benefit should the LAQR market result in an unusual geographic distribution of the application of emissions control technology. This approach also minimizes uncertainty for sources and eliminates any "double control" problem that might result from identifying specific BART sources after the LAQR market is implemented.

Another benefit to addressing the criteria for specific BART certifications within the implementation parameters of the LAQR market is that EGU operators know that at the final compliance date of the LAQR, BART is fully satisfied for EGU sulfur dioxide and nitrogen oxide emissions in the state. We are willing to assist EPA in developing

appropriate criteria for the sulfur dioxide and nitrogen oxides emissions markets under the LAQR.

Extension of LAQR to all states to address "reasonable progress" under the RHR

EPA should explore expansion of the LAQR concept to the remainder of the lower 48 states to provide more certainty with respect to EGU control requirements under the RHR. This would afford the same level of certainty to all national utility operators in addressing BART and their contribution to reasonable progress. If EPA adopts the WRAP criteria for BART certification as described above, there could be seamless integration with the current RHR state implementation plans already submitted. For sulfur dioxide emissions caps, should the LAQR be expanded, we recommend that EPA honor the limits established for the five states that have already adopted state plans under the RHR provisions for the Grand Canyon Visibility Transport Commission. We also recommend EPA investigate the possibility of separate trading zones for the East and West, similar to the approach incorporated into the pending Clear Skies legislation. This would limit the possibility that sulfur dioxide and nitrogen oxides allowances generated in the emissions-rich East might be transferred to the much cleaner West. At the very least, the EPA should assess the impacts to all Class I areas under a national or regional trading scheme and share their results as part of its supplemental notice regarding the possible expansion of the LAQR.

Using a NOx cap to replace NOx increments

EPA should also consider whether the nitrogen oxides emissions caps under the LAQR could satisfy the pending requirement for EPA to address short-term nitrogen dioxide increments. The EPA has discretion under section 166 of the Clean Air Act to adopt nitrogen-related measures other than increments. The implementation of increment tracking has been fraught with administrative burdens on states, sources and the FLMs. While this ought to be explored for the entire nation and for short- and long- term NOx increments, in particular EPA should explore using a western nitrogen oxides cap on EGUs as a means of reclaiming increment in the areas of the rural West that have seen continued emission growth in nitrogen oxides since the late 1970s. The utility emissions comprise a major portion of the stationary source inventory, particularly in rural areas. Substantial reductions in their emissions could address western regional increases that might otherwise be controlled by the, as yet, unimplemented increment. If an appropriate western cap could satisfy the increment requirement, then future source permitting would meet the increment by staying within the cap limits. A major new source would then only have to assess its impacts on identified air quality related values for any affected Class I area and assess its control technology selection helping to simplify the permitting process.

Allowing other stationary sources to opt into the LAQR trading arrangements

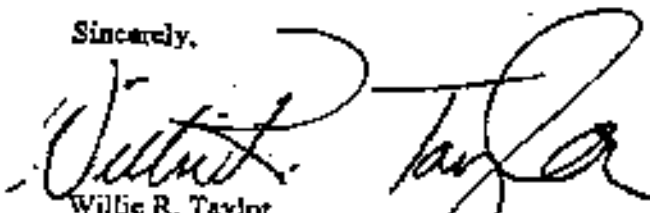
We recommend that EPA, in its supplemental notice, offer approaches that would allow stationary sources other than electric utilities to opt into the trading arrangements that

might be established under LAQR. While this could benefit all sources it would be of particular importance to the other 25 source categories potentially subject to BART. For instance, a BART-eligible source might find it easier to obtain emission reductions that might be required under BART by purchasing them from other sources, and without hindering reasonable progress toward regional haze reduction. Such approaches would reduce administrative burden, and transaction costs associated with SIP planning and improve the cost-effectiveness of emission control in general.

Finally, the WRAP is now exploring a consensus approach to recommending any expansion of the LAQR. We encourage EPA to work closely with the WRAP. Should the WRAP be successful in making specific recommendations on the key points of cap levels, trading regions, BART equivalency, and source permitting requirements, we hope that EPA will consider those recommendations in developing the national program.

Again, we appreciate the opportunity to comment on the proposed LAQR. We believe it will result in sweeping regional improvements in air quality for many park and wildlife refuge units. We look forward to working with EPA in the near future. If you have any questions please contact Bruce Polkowsky (303) 957-6944, or Chris Shaver (303) 969-2074.

Sincerely,



Willie R. Taylor
Director, Office of Environmental
Policy and Compliance